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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 73 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.

2. To be referred to the Reporter or not? - Yes.

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3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?-No.

COMMISSIONER OF INCOME TAX

Versus

THE PATEL MILLS CO. LTD.

Appearance:

Mr.M.J. Thakore, instructed by
MR MANISH R BHATT for the Applicant.

Mrs. Hansa Punani, Advocate, for the
OFFICIAL LIQUIDATOR for the Respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 03/02/97

ORAL JUDGEMENT : (Per R.K. Abichandani, J.)

The Income Tax Appellate Tribunal, Ahmedabad has referred for the opinion of this Court, the following question :-

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the sum of Rs.30,000/- was allowable as revenue expenditure under section 37 of the Act?"

The matter relates to the assessment year 1976-'77. The assessee paid a sum of Rs.30,000/- as deposit against an order for purchasing machinery for Rs.3,00,000/-. Subsequently, the same type of machinery was purchased for Rs.1,90,990/- from another party. Since the machinery was not purchased from the party with whom the deposit of Rs.30,000/- was made and was purchased from another party, the first party forfeited the deposit of Rs.30,000/-. The amount of Rs.30,000/- was, therefore, claimed as revenue expenditure by the assessee. The Income Tax Officer, however, disallowed the same and rejected the contention of the assessee that it was their business loss incurred in the interest of business expediency. On appeal, the Commissioner of Income Tax agreed with the assessee's contention that the amount should be treated as business loss. The Tribunal, dismissing the appeal of the Revenue, held that it was quite natural that any prudent businessman would prefer to purchase machinery for Rs.1,90,990/- rather than to buy it for Rs.3,00,000/- when the machinery was equally durable and of the same type. It was held that the assessee had allowed the amount of Rs.30,000/- to be forfeited due to business expediency.

The sum of Rs.30,000/- was deposited with the first party as an advance payment by the assessee for purchase of a capital asset, i.e. machinery. Since same type of machinery was available for Rs.1,90,990/- as against Rs.3,00,000/- quoted by the first party, the assessee went in for the purchase from the party offering the machinery for Rs.1,90,990/-, allowing Rs.30,000/- to be forfeited by the first party. The loss of Rs.30,000/- by forfeiture was incurred with a view to purchase the machinery at Rs.1,90,990/- from the other party, instead of paying Rs.3,00,000/- to the first party. Therefore, the total cost incurred by the assessee for acquiring the machinery would come to Rs.1,90,990/-, being the price

paid to the second party, plus Rs.30,000/-, which were allowed to be forfeited for the purpose of acquiring the machinery at a lesser cost. Therefore, the entire amount would be counted towards acquisition of the capital asset. The loss of Rs.30,000/- by virtue of forfeiture was suffered neither for the purpose of earning profits nor for the purpose of furthering, protecting or continuing the business of the assessee, which was to be carried on from day to day. The amount was allowed to be forfeited with the object of avoiding higher payment of price for the machinery, which was now available for a lesser amount and, therefore, the loss was in the nature of a capital loss. Under the above circumstances, we hold that the Tribunal was in error in coming to the conclusion that the sum of Rs.30,000/- was allowable as revenue expenditure under Section 37 of the Act.

We are fortified in our opinion by the decision of the Honourable the Supreme Court in Swadeshi Cotton Mills Company Limited v. C.I.T., reported in 63 ITR 65, in which, while dealing with a case, where, in view of the altered circumstances, the assessee had subsequently cancelled the contracts, as the machinery which was to be purchased, would not be required for its business, and paid Rs.15,000/- and Rs.20,000/- by way of compensation to the other contracting parties for having cancelled the contracts, it was held that the payment was made by the assessee neither for the purpose of earning profit nor for the purpose of furthering, protecting or continuing its business, which was to be carried on from day to day. The payment was made with the object of avoiding an unnecessary investment in capital assets and was in the nature of capital expenditure. The decisions referred to by the Tribunal in Mahabir Sugar Mills (P) Ltd. v. C.I.T., reported in 89 ITR 143 and C.I.T. v. Birla Gwalior (P) Ltd., reported in 89 ITR 266, do not have any direct bearing on the controversy involved and they do not provide any guidance on the present question.

The question referred to us is, therefore, answered in the negative, in favour of the Revenue and against the Assessee. The Reference stands disposed of accordingly. No order as to costs.

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(apj)